

REMARKS

Claims 1 through 4 and 6 through 14 are pending in this Application. New claim 14 has been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, Fig. 6 and the related discussion thereof in the written description of the specification, noting page 24, line 14 through page 25, line 4. Applicant submits that the present Amendment does not generate any new matter issue.

Claims 1 through 4 and 6 through 13 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Olofsson et al.

In the statement of the rejection the Examiner maintained the position that Olofsson et al. disclose a base station apparatus, transmission rate changing method, and recording medium corresponding to those claimed, referring to various parts of the patent text. This rejection is traversed.

As stressed in the responsive Amendment of February 26, 2006, the factual determination of lack of novelty under 35 U.S.C. § 102 requires the **identical** disclosure in a single reference of **each** element of a claimed invention, such that the **identically** claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). Applicant further stresses that when imposing a rejection under 35 U.S.C. § 102 for lack of novelty, the Examiner is required to **specifically identify** wherein an applied reference is asserted to **identically** disclose each and every feature of a claimed invention, particularly when such is not

apparent as in the present case. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). That burden has **not** been discharged. Indeed, there are significant differences between the inventions defined in each of the independent claims and Olofsson et al. that scotch the factual determination that Olofsson et al. disclose a base station apparatus, transmission rate changing method, and recording medium identically corresponding to those claimed.

As the Examiner notes, Olofsson et al. discloses processes wherein channel characteristics are derived based on measurements of link quality parameters over a predetermined period, user quality values are estimated based on channel characteristics, and by comparing for the estimated user quality values, a modulation and channel coding combination on an RF link that provides the best user quality value is selected. However, the parameters on which a change is predicated, i.e., the criteria for a change in Olofsson et al. are **channel characteristics and user quality values**. The “predetermined period” in Olofsson et al. is provided as a period in which to derive these parameters.

Therefore, as one having ordinary skill in the art would have understood, if the channel characteristics or use quality values are changed, a modulation and channel coding combination is also changed according to the methodology of Olofsson et al. Significantly, Olofsson et al. do **not**, repeat **not**, assume that the “predetermined period” is changed in the first place. Therefore, as one having ordinary skill in the art would have also understood, the “predetermined period” according to Olofsson et al. does **not**, repeat **not**, serve as a decisive parameter (criterion) for a change. Rather, the channel characteristics or use quality values serve as a decisive parameter (criterion) for change in a modulation and channel coding combination.

Significantly, each of independent claims 1, 6 and 10, requires that whether the transmission rate is changed be determined in accordance with whether “a remaining period occurring between a change in the transmission rate ... and an end of the channel-allocated period” (a “remaining period”) is changed. Therefore, the “remaining period” serves as a decisive parameter (criterion) to determine whether the transmission rate should be changed.

Based upon the foregoing it should be apparent, as one having ordinary skill in the art would have recognized, that the “remaining period” specified in each of independent claims 1, 6 and 10 is neither disclosed nor suggested by Olofsson, et al.

The above argued functionally significant difference between the claimed inventions and Olofsson et al. undermines the factual determination that Olofsson et al. disclose a base station apparatus, transmission rate changing method, and recording medium identically corresponding to those claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicant, therefore, submits that the imposed rejection of claims 1 through 4 and 6 through 13 under 35 U.S.C. § 102 for lack of novelty as evidenced by Olofsson et al. is not factually viable and, hence, solicits withdrawal thereof.

New Claim 14.

New claim 14 is clearly free of the applied prior art. The “change determination unit” of claim 14 changes the transmission rate for the terminal apparatus if the “remaining period” is equal to or greater than the threshold value. If the “remaining period” is below the threshold value, it determines not to change the transmission rate for the terminal apparatus. Clearly, the “change determination unit” of claim 14 is neither disclosed nor suggested by Olofsson et al.


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Based upon the foregoing, it should be apparent that the imposed rejection has been overcome and that all remaining claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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